



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
WASHINGTON, DC 20362-5101

IN REPLY REFER TO

NAVSEAINST 4740.5A

Ser 00C2/0103

3 October 1986

NAVSEA INSTRUCTION 4740.5A

From: Commander, Naval Sea Systems Command

Subj: SALVAGE SERVICES ARRANGED BETWEEN THE UNITED STATES AND
FOREIGN GOVERNMENTS

Ref: (a) OPNAVINST 4740.2E
(b) Federal Acquisition Regulations (FAR)

Encl: (1) Summary of International Agreements Concerning Waiver
of Maritime Salvage Claims By and Against the United
States of America
(2) Information Needed Concerning a Potential Salvage
Incident

1. Purpose. To provide information and guidance to the personnel on naval vessels and at all other activities under the cognizance of the Department of the Navy involved in cases of intergovernmental salvage services.

2. Cancellation. NAVSEAINST 4740.5 of 14 March 1977 was cancelled by NAVSEANOTE 5215 of 2 January 1986.

3. Scope

a. General. This instruction covers marine salvage services rendered by vessels and other activities under the cognizance of the Department of the Navy to vessels, cargo or other property of foreign governments, or when such services are rendered by a foreign government to vessels, cargo or other property under the cognizance of the Department of the Navy.

b. Naval Vessels and Activities. The phrase "Naval Vessels and Activities," when used in this instruction, include all vessels and activities under the cognizance of the United States Department of the Navy.

c. Port and Harbor Services. This instruction does not apply to routine port and harbor services rendered to vessels owned by foreign governments subsequent to the completion of

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salvage services, while such vessels are in port in the United States, its territories or possessions. Such routine services are not within the purview of salvage services and, therefore, are not subject to the salvage claim waiver provisions. Similarly, routine port and harbor services rendered to naval vessels in a foreign port, subsequent to the rendering of salvage services by vessels owned by a foreign government, are not subject to the salvage claim waiver provisions. Such routine port and harbor services rendered to, or by, naval vessels or facilities and vessels or facilities of a foreign government are, under appropriate circumstances, reimbursable to the government providing the services.

d. Life Salvage. This instruction does not apply to life salvage. Governments of virtually all nations recognize a moral obligation to respond to requests for assistance on the high seas where human life is in danger. Most nations, including the United States, have subscribed to the Brussels Convention on Assistance and Salvage at Sea signed at Brussels on September 23, 1910, 37 Stat. 1658. That convention specifically provides that it is the duty of every master to render assistance to everyone at sea in danger of being lost, so far as he can do so without serious danger to his vessel, crew and passengers. The U.S. law implementing this provision (46 U.S.C. § 728) provides for penalties in the event of a master's failure to comply. Both the Convention (Article III) and U.S. law (46 U.S.C. § 731) exclude warships and public vessels. Nevertheless, it has always been and remains Department of the Navy policy to render all assistance possible to prevent loss of life at sea. Under both the Brussels Convention and U.S. law, life salvage alone does not entitle the party rendering the service to a salvage award.

4. Treaty Background

a. The United States has entered into certain treaties and other international agreements with certain foreign governments which provide, among other things, that claims by one government against the other government for maritime salvage shall be waived, provided that the vessel or cargo salvaged was owned by one of the governments. Some of these agreements also require that the property salvaged was being used by the armed forces of one of the governments for its official purposes or in furtherance of the purposes of the treaty or international agreement. Enclosure (1) contains a summary of such international agreements.

b. The salvage claim waiver provisions of these treaties and international agreements were agreed upon by the United States and the foreign governments concerned for the purpose of promoting the ancient principle of saving life and property at sea. More specifically, such agreements recognize that it is in the overall interests of both the United States Government and the

foreign governments concerned to render salvage assistance to save the lives and property of government employees and the vessels, cargo and property of each other's governments, without expectation of remuneration to the governments providing the salvage services.

c. The salvage claim waiver provisions of these treaties and international agreements were intended to apply to situations where property of one government is in peril -- a circumstance which is an essential element of the legal definition of "salvage" -- and immediate assistance of the other government is available and needed. Further, many of the agreements by their terms apply only to assistance rendered to "vessels" or to "vessels and cargo." However, some situations may arise where assistance in the nature of salvage services by another government is desired but which, if rendered, might not give rise to a maritime salvage claim. In other situations, the assistance of another government may be desired with respect to matters not subject to the salvage claim waiver, e.g., certain recoveries of crashed aircraft and/or bodies of persons aboard such aircraft from the water. In each of these situations, the government whose assistance is requested might decline to provide such assistance without assurance of remuneration, particularly if substantial costs, time, or expenditure of resources would be incurred in providing the requested assistance.

5. Discussion for Department of the Navy Purposes

a. Reference (a) sets forth the general policies, responsibilities and procedures concerning ship salvage in the Department of the Navy and describes the several types of salvage operations covered by this instruction.

b. Various treaties and international agreements with foreign governments exist which contain provisions for waiver of certain maritime salvage claims by and against the United States. A summary of such agreements is contained in enclosure (1). However, because these agreements change periodically, each situation potentially involving salvage assistance by or to a foreign government must be examined individually for determination of whether a waiver is applicable. Procedures for referral of questions regarding applicability of waiver of maritime salvage claims are set forth in paragraph 6 below.

c. The scope of the waivers of maritime salvage claims described in enclosure (1) should be construed to include all aspects of services rendered by one government to the other with organic personnel and equipment. Specifically, out-of-pocket costs such as fuel, materials consumed or expended, and personnel travel and per diem costs are subject to the waiver. The waiver provisions, however, should not be construed to include the cost

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of obtaining outside services which the government providing salvage assistance may arrange due to its inability to provide the necessary services exclusively with its organic assets.

d. Depending on the particular circumstances of the case, salvage services covered by this instruction may be rendered within the territorial waters of either of the sovereigns concerned, within the territorial waters of a third sovereign, or in international waters. The rendering of salvage services within a sovereign's territorial waters may be governed by the salvage laws of the territorial sovereign, to the extent that such laws are not inconsistent with applicable treaties or other international agreements.

e. Many governments have enacted legislation or issued regulations which limit or prohibit the access and employment of foreign-flag salvage equipment within their territorial waters. These statutes or regulations are commonly referred to as "cabotage laws." "Cabotage" is a generic term denoting navigation and trade along the coast or territorial waters of a single state. In their substantive aspects, these cabotage laws vary in scope from requiring foreign salvors to register or obtain a license for rendering salvage services within a sovereign's territorial waters, to outright proscription of salvaging by foreign salvors. For example, the laws of the United States prohibit foreign vessels, under penalty of forfeiture, from engaging in salvage operations in most of the territorial waters of the United States, unless authorized by treaty or, under appropriate circumstances, by the Commissioner of Customs. See 46 U.S.C. § 316(d).

f. It is not within the purpose or scope of this instruction to define or list the cabotage laws of foreign governments and their applicability to the salvage services referred to herein. However, the problem of the potential existence and applicability of these cabotage laws is mentioned in order to emphasize the requirement of complete compliance with this instruction. Such compliance will not only ensure proper ascertainment and applicability of the salvage claim waiver provisions of the pertinent treaty or international agreement, but will also serve to resolve any questions regarding the existence and applicability of these cabotage laws.

6. Procedure for Department of the Navy Activities

a. Department of the Navy as the salvor

(1) Primary Responsibility. Under reference (a), the cognizant Fleet Commander-in-Chief or the Commander, Naval Sea Systems Command (COMNAVSEASYS COM) will normally have primary responsibility for operations wherein vessels or activities of the Department of the Navy are called upon to perform salvage

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services, including those requested by a foreign government. While the treaties and agreements mentioned in paragraph 6 do not constitute commitments to undertake such work, full consideration should be given to the spirit of the agreement and all possible assistance should be rendered. It is the policy of the U.S. Government (OMB circular A-76) not to compete with commercial salvors. Therefore, when a vessel or activity of the Department of the Navy is called upon to perform salvage services for a foreign government, a determination must be made that the salvage response is urgent and that commercial salvage services are not available to render the same service within the same period of time in which Department of the Navy assistance can be provided. The factors considered in reaching such determination must be given in the initial notice to the Chief of Naval Operations (CNO) required by paragraph 6a(2). Non-urgent salvage of foreign government owned property must be approved by CNO prior to any response. Any request by a foreign government or foreign private source for salvage of private property should be directed to the State Department for resolution. NATO and other treaty agreements may govern the response by Department of the Navy activities to such foreign salvage requests.

(2) Department of the Navy Immediate Notice of Request. Any command or activity receiving a request for salvage assistance which appears to be within the purview of this instruction should immediately advise the Chief of Naval Operations (CNO) (Navy Department Duty Captain) by telephone (AUTOVON 225-0231, or commercial (202) 695-0231) and by an Operational Report Three (OPREP THREE) message with NAVSEASYSKOM and the Judge Advocate General (JAG) (Admiralty Division) as information addressees. The initial phone calls and messages should identify the requestor and as much information listed in enclosure (2) as possible. CNO will then notify NAVSEASYSKOM (SEA OOC) or the NAVSEA duty officer and JAG (Admiralty Division). Fleet and Naval Surface Force Commanders may accept such requests if assets and capability to perform the task are available. If commercial assistance will be required, the requesting government should be advised, and its prior agreement to reimburse the cost of such commercial assistance should be obtained. Subordinate commands may similarly accept salvage tasks when the situation is an emergency and any delay might hazard the distressed ship. Whenever salvage work is undertaken, situation reports (SITREPS) should be provided at least daily until the salvage operation has been completed.

(3) Denial of Salvage Request. When it is deemed necessary or advisable to deny a request for salvage assistance which might otherwise fall under international agreements, the matter should immediately be referred to CNO by the same method as in paragraph 6a(2) with JAG (Admiralty Division), NAVSEASYSKOM (SEA OOC) and appropriate commands in the naval establishment as information addressees.

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(4) Salvage Operation Report. A post salvage operation report will be filed by the on-scene operational commander in accordance with current NAVSEASYSKOM salvage instructions. Collection of the required information before and during the operation is essential to prompt processing of the salvage claim, if the claim is not waived.

(5) Waiver of Salvage Charges. After JAG has verified the applicable treaty or agreement, the charges will be waived by the Supervisor of Salvage (NAVSEASYSKOM (SEA OOC)) under authority delegated by the Secretary of the Navy (10 U.S.C. § 7365). If, in special cases, it is considered that all or part of the charges should be billed to the foreign government, NAVSEASYSKOM (SEA OOC) shall first obtain concurrence of CNO, JAG, and the State Department before rendering the bill.

(6) Reimbursement of Salvage Costs. NAVSEASYSKOM (SEA OOC) will arrange, if necessary, to reimburse vessels and activities of the United States for their out-of-pocket expenses incurred in taking action under this instruction. It is specifically intended that ships' operating targets (OPTARs) not be used for such operations except as a temporary measure to expedite response.

b. U.S. Navy requiring foreign salvage assistance

(1) General Procedure. In general, Department of the Navy requests for salvage assistance from a foreign government will be made either by the CNO, or at established inter-governmental or inter-Navy interfaces in the foreign government's naval establishment. Notification procedures of paragraph 6a(2) apply here also. When such assistance is desired, the CNO, in consultation with JAG, will determine whether an international agreement containing a waiver of maritime salvage claims is in existence between the United States and the foreign government concerned. If such an agreement exists, the CNO will further determine whether the assistance to be requested is subject to the waiver provisions of that agreement. If it is not, the CNO may, subject to the availability of funding, determine that reimbursement of the costs of providing the assistance is appropriate. When salvage assistance from a foreign government is desired, the Department of the Navy requesting-activity will, at the time such request is made, either:

(a) Advise the foreign government concerned that the Department of the Navy considers the requested service to be

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subject to a maritime salvage claim waiver and request the foreign government's concurrence; or

(b) Specify that the service requested is subject to reimbursement of costs incurred, in which case an appropriate contract will be negotiated by competent authority under reference (b).

If the foreign government agrees to provide services with organic assets subject to the waiver, but indicates that commercial assistance will also be required, the Department of the Navy requesting activity, subject to the availability of funding, may agree to reimburse the other government for the reasonable cost of such assistance under an appropriate contractual arrangement. It is essential that both governments clearly understand at the outset whether, and to what extent, remuneration is contemplated. In any event, the CNO, cognizant fleet and operational commanders, JAG and NAVSEASYSOM (OOC) must be kept fully advised as arrangements for assistance by the foreign government concerned are developed and implemented. The responsibilities of the various commands are set forth in reference (a) and are equally applicable in this case.

(2) Emergency Salvage Need. In the case of a bona fide salvage emergency, the requirements of paragraph 6b(1) do not preclude a commanding officer or other cognizant commander from obtaining immediate local salvage assistance from any source. In such cases, it is to be expected that the commanding officer will take such immediate action strictly on the basis of his good judgment and the exigencies of the situation. It is not necessary in this case to first ascertain whether or not any international agreement applies to the situation at hand.

(3) Salvage Operation Report. Daily SITREPS and a post-salvage report will be filed by the U. S. on-scene operational commander in the same manner as if the operation were being conducted by the salvage forces. The format will be as specified in current NAVSEASYSOM salvage instructions.

(4) British Navy Assistance. Whenever salvage assistance is required from the British Navy (RN), the commander requiring the assistance should address the request to the Commander in Chief, U.S. Naval Forces, Europe (CINCUSNAVEUR). CINCUSNAVEUR will then pass the request to the British Ministry of Defence, United Kingdom (Navy), Command Center. The RN maintains a significant salvage capability in the Mediterranean and the United Kingdom.

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c. U.S. Navy Salvage Operations Specialist. Whenever salvage services are provided under paragraphs 6a or 6b of this instruction, a salvage operations specialist should be on-scene as the chief technical advisor to the Department of the Navy on-scene commander. The designation of a chief technical advisor is particularly important whenever a joint operation between U. S. Navy salvage forces and foreign salvage forces is planned. Upon request of the operational commander, the Supervisor of Salvage (SEA 00C) will dispatch a qualified military or civilian salvage operations specialist.



C. A. BARTHOLOMEW
Director of Ocean Engineering
Supervisor of Salvage and Diving

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SUMMARY OF INTERNATIONAL AGREEMENTS CONCERNING
WAIVER OF MARITIME SALVAGE CLAIMS BY AND AGAINST THE
UNITED STATES OF AMERICA

A. INTRODUCTION

1. The United States has entered into international agreements with many foreign governments which provide that claims of one government against the other government for maritime salvage shall be waived. These agreements are contained in so called Knock-for-Knock Agreements and Status of Forces Agreements.

2. The following brief discussion of these agreements is limited to cases where naval vessels of the United States are providing salvage services to public vessels of a foreign government or where ships and vessels of a foreign Navy are providing salvage services to naval vessels of the United States.

3. No reference is made herein to the Salvage Convention of 1910, the Treaty with Canada of 1908, the Treaty with Mexico of 1935, to various Friendship, Commerce, and Navigation Treaties, or to any other treaties or agreements which cover other aspects of salvage but which are not pertinent to inter-governmental waiver of maritime salvage claims.

4. It is important to realize that the applicability of any part of an international agreement can be determined only after consideration of the complete text and that any attempt to determine applicability on the basis of excerpts from the text should be avoided.

B. KNOCK-FOR-KNOCK AGREEMENTS

1. The first agreement between the United States and a foreign government to waive maritime salvage claims against each other was contained in the so called Knock-for-Knock Agreement between the United States and the United Kingdom in 1942, EAS 282 (EAS stands for Executive Agreement Series), found in 56 Stat. 1760 (1942) (Stat. stands for U.S. statutes at large, published annually), with extensions and amendments in TIAS 1558 (1946) and TIAS 1636 (1947). (TIAS stands for U.S. Treaties and Other International Agreements, which is a compilation of all treaties and other international agreements entered into between the U.S. and other countries, published by the Department of State.) The Knock-for-Knock Agreement embraced the waiver of many other kinds of claims similar to maritime salvage claims.

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Enclosure (1)

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2. In general, the Knock-for-Knock Agreement provides that claims of one government against the other government arising out of maritime collisions, faulty navigation, provision of salvage services, and certain other similar causes are waived if the vessels or other property involved were owned by the United States or the United Kingdom. Where the claim relates to the provision of salvage services, subsequent interpretations by the parties have modified the waiver provision so that it will not apply if an agreement is reached to pay compensation prior to the commencement of the salvage operation.

3. Knock-for-Knock Agreements were also made by the United States with Australia, Canada, France, and Norway during World War II or shortly thereafter.

4. All Knock-for-Knock Agreements between the United States and foreign governments have terminated, except the agreements with the United Kingdom, EAS 282, TIAS 1558, and TIAS 1636, and with Canada, TIAS 1582.

C. NATO STATUS OF FORCES AGREEMENT. The United States has entered into a Status of Forces Agreement (SOFA) with all NATO countries. The SOFA includes provisions for the waiver of many claims by the Contracting Parties against other Contracting Parties, including certain claims for maritime salvage. With regard to inter-governmental claims for salvage service, Article VIII of the NATO Status of Forces Agreement provides as follows:

1. Claims for Maritime salvage by one Contracting Party against any other Contracting Party shall be waived, provided that the vessel or cargo salvaged was owned by a Contracting Party and being used by its Armed Services in connection with the operation of the North Atlantic Treaty.

2. For the purposes of paragraphs 1 and 2 of this Article, the expression "owned by a Contracting Party" in the case of a vessel includes a vessel on bareboat charter to that Contracting Party or requisitioned by it on bareboat terms or seized by it in prize (except to the extent that the risk of loss or liability is borne by some person other than such Contracting Party).

a. The full text of the NATO Status of Forces Agreement is set out in 4 UST 1792 (UST stands for United States Treaties, which is a continuous compilation of all United States treaties and other agreements between the U.S. and foreign governments commencing 1 January 1950).

Enclosure (1)

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b. The following countries are parties to the NATO Status of Forces Agreement:

Belgium	Greece	Norway	United States
Canada	Italy	Portugal	and
Denmark	Luxembourg	Turkey	West Germany
France	Netherlands	United Kingdom	

c. Where the United Kingdom or Canada is involved, some maritime claims are cognizable under the Knock-for-Knock Agreement, while others are within the SOFA, depending on the geographical area in which the underlying claim arises and the nature and character of the claim. In general, the Knock-for-Knock Agreement provides the broader coverage.

D. CENTRAL TREATY ORGANIZATION (CENTO) AND SOUTHEAST ASIA TREATY ORGANIZATION (SEATO). Neither CENTO nor SEATO have the equivalent of the Status of Forces Agreement. There are no agreements regarding maritime salvage claims unique to these organizations.

E. OTHER STATUS OF FORCES AGREEMENTS. The United States has also entered into Status of Forces Agreements with Australia (14 UST 506), Japan (11 UST 1652), and Korea (17 UST 1667). These agreements contain clauses waiving inter-governmental claims for maritime salvage similar to the NATO Status of Forces Agreement.

F. CONCLUSION. Forces in the field should not attempt to determine the applicability of any of the above mentioned agreements to a particular salvage operation. Where naval vessels or salvage facilities of the Department of the Navy are involved in a salvage situation with public vessels or salvage facilities of one of the above mentioned foreign governments, CNO, JAG and NAVSEASYSOM (SEA OOC) should be advised as soon as possible in accordance with the provisions of paragraph 6. of this instruction. CNO, JAG and NAVSEASYSOM (SEA OOC) will thereupon determine the applicability of any of the above mentioned agreements to a particular salvage situation.

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INFORMATION NEEDED CONCERNING A POTENTIAL SALVAGE INCIDENT

Provide the following information as soon as possible. Delay in providing those items marked with an asterisk (*) may delay approval to proceed. Salvage by definition is not as time critical as a life threatening situation.

- * 1. Requestor and point of contact with phone numbers.
- * 2. Identify vessel or object to be salvaged and its owner.
- * 3. Description of situation:
 - a. Type of salvage incident.
 - b. Latitude and Longitude and nearby geographical name references.
- * 4. Impact of not responding:
 - a. Hazard to navigation.
 - b. Pollution threat.
 - c. Political implication.
- * 5. Actions taken to date and intentions.
- * 6. Type of assistance requested.
- 7. Closest ports and airfields (commercial and foreign/U.S. military).
- 8. If a vessel:
 - a. Extent of flooding and physical damage.
 - b. Attitude such as list, draft, heading.
- 9. Names of commercial companies that are potentially involved and points of contact, if available.
- 10. If an aircraft or object, depth of water.
- 11. U. S. Navy assets that could respond.

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Enclosure (2)